

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dominique BOUREL et al.
Title: THERAPEUTIC PRODUCTS WITH
ENHANCED ABILITY TO
IMMUNOMODULATE CELL FUNCTIONS
Appl. No.: 10/551,819
Filing Date: 06/12/2006
Examiner: Ilia I. Ouspenski
Art Unit: 1644
Confirmation Number: 3972

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the application.

The Patent Office determined that the patent was entitled to 145 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

In *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010), the Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do *not* 'overlap' under section 154 (b)(2)" (emphasis added).

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute (now adopted by the Patent Office), and has determined that the application is entitled to 596 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	682 days
(b) Total Applicant delay:	86 days
Final PTA Determination:	596 days

Applicants therefore respectfully request that the patent be accorded 596 days PTA.

As this Request is being filed due to a Patent Office error in interpreting and applying the PTA statute, Applicant believes no fee is due with this Request. However, the Commissioner is authorized to charge any fees which may be due to Deposit Account No. 19-0741.

Respectfully submitted,

Date 22-APR-2010

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4059
Facsimile: (202) 672-5399

By 

Rouget F. Henschel
Attorney for Applicant
Registration No. 39,221

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 065691-0408

Application Number: 10/551819

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	04/03/2003	-914		
Edit Delete	International Filing Date	04/05/2004	-546		
	PCT National Stage Commencement Date	10/03/2005	0		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	06/12/2006	252		
	14 month From Application date	08/12/2007	678		
Edit Delete	Restriction Requirement	03/21/2008	900	222	
Edit Delete	Restriction Requirement Response Received at PTO	05/21/2008	961		
Edit Delete	Non-Final Office Action	08/07/2008	1,039		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/05/2008	1,068		
	3 Year Period Starts	10/03/2008	1,096		
Edit Delete	Non-Final Office Action	12/03/2008	1,157		
	Non-Final Office Action + 3 months	03/03/2009	1,247		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/19/2009	1,324		77
Edit Delete	Final Office Action	06/30/2009	1,366		
	Final Office Action + 3 months	09/30/2009	1,458		
Edit Delete	Notice of Allowance	10/09/2009	1,467		9
	3 Year Period Stopped	01/06/2010	1,556	460	
Edit Delete	Request For Continued Examination (no amendment)	01/07/2010	1,557		
Edit Delete	Notice of Allowance	01/27/2010	1,577		
	Projected Patent Grant Date	08/10/2010	1,772		
	Totals:			682	86
	PTA:			596	